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NORFOLK SOUTHERN RAILWAY
COMPANY,

Plaintiff,

Civil Action No. 1:01cv704

v.

ABC-NACO INC.,

Defendant.

ANSWER WITH AFFIRMATIVE DEFENSES

AND NOW comes the Defendant, ABC-NACO Inc., by and through its attorneys, THOMAS P. McGINNIS, ESQUIRE and ZIMMER KUNZ, PLLC and files the following Answer with Affirmative Defenses averring as follows:

1. The allegations contained in paragraph 1 of Plaintiff's Complaint are directed to parties other than this Defendant and/or concern matters as to which this Defendant has no personal knowledge and strict proof is demanded.
2. Paragraph 2 of Plaintiff's Complaint contains conclusions of law to which no response is required. While it is admitted that ABC-NACO Inc. does have a place of business at the specified address, the remaining allegations are denied.
3. Paragraphs 3 and 4 of Plaintiff's Complaint contain conclusions of law to which no response is required. Insofar as any further response is required, Defendant does not admit that venue is proper in this judicial district.

4. Paragraph 5 of Plaintiff's Complaint contains conclusions of law to which no response is required. Insofar as any further response is required, it is averred that any agreement between ABC-NACO and Norfolk Southern speaks for itself and it is denied that paragraph 5 of Plaintiff's Complaint fully describes any agreement between these parties.

5. Paragraph 6 of Plaintiff's Complaint contains conclusions of law to which no response is required. Insofar as any further response is required, Defendant, ABC-NACO admits that it has not made payment in the amount requested by Plaintiff. Defendant, ABC-NACO denies that it is obligated to make payment in the amount claimed by Plaintiff.

6. Paragraph 7 of Plaintiff's Complaint is denied as stated. Defendant, ABC-NACO denies that it owes Norfolk Southern the amount asserted.

WHEREFORE, Defendant, ABC-NACO denies that it is liable to Plaintiff and demands that judgment be entered in its favor.

First Affirmative Defense

7. Plaintiff's Complaint fails to state a cause of action upon which relief may be granted.

Second Affirmative Defense

8. Defendant denies that it is obligated or otherwise owes Norfolk Southern in the amount claimed in Plaintiff's Complaint.

Third Affirmative Defense

9. Defendant claims by way of set-off amounts which have been paid to Norfolk Southern and which have continued to be paid since the date Plaintiff's Complaint was filed.

Fourth Affirmative Defense

10. Defendant denies that Plaintiff is entitled to interest, costs and attorney's fees as claimed.

Fifth Affirmative Defense

11. To the extent revealed applicable in discovery or at the time of trial of this matter, Defendant sets forth the doctrines of waiver and estoppel as a bar to Plaintiff's claim in whole or in part.

Sixth Affirmative Defense

12. Defendant sets forth the doctrines of merger and acquisition as a bar to and/or in diminution of Plaintiff's claim to the extent revealed applicable by discovery rendered in this matter.

WHEREFORE, Defendant, ABC-NACO Inc., denies that it is liable to the Plaintiff in the amount asserted and demands that judgment be entered in its favor.

Respectfully submitted,

ZIMMER KUNZ, PLLC

By 
Thomas P. McGinnis, Esquire
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Date: September 17, 2001

Attorneys for ABC-NACO Inc., Defendant